IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 10138 of 1992

Between:

1 Fasahatunnisa Begum @ Shamshusinnisa Begum,
W/o Ibrahim Bin Abdulla Masquati,
R/o 22-4-470, Alija Kotla, Hyderabad.
2 Shaheen Begum, W/o Bazar Nawab (D/o of late Darwesh Begum)
22-4-470, Alija Kotla, Hyderabad
3 Fouzia Begum, D/o late Darwesh Begum,
22-4-470, Alija Kotla, Hyderabad

..... PETITIONERS

AND

1 The Union of India, rep. by its Secretary, Ministry of Defence,
New Delhi
2 The Govt. of Andhra Pradesh, rep. by its Secretary,
Revenue Department, Secretariat Building , Hyderabad
3 The District Collector, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or Order or Direction as the case may be more particularly one in the nature of Writ of "Mandamus" directing the respondents herein to initiate the proceedings under the Provisions of Land Acquisition Act, 1894 for acquiring the petitioners land namely, the extent of Ac.3.35 guntas in S.No.39 and Ac.4.13 guntas in S.No. 40, both in Kanchanbagh Village, Charminar Mandal, Hyderabad Dist. and pay compensation in respect thereof in accordance with the law.

Counsel for the Petitioners: MR.K.PRATAP REDDY

Counsel for the Respondent No.1: Mr.A.Rajasekhar Reddy, S.C. for Central Govt.

Counsel for the Respondents 2 and 3: GP FOR LAND ACQUISITION

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No.10138 of 1992

O R D E R :

The petitioners herein, claiming to be owners of the land in survey nos.39 and 40 of Kanchanbagh village, Charminar mandal, Hyderabad district, filed this Writ Petition, *inter alia,* seeking for a writ of Mandamus for a direction to initiate proceedings under the provisions of the Land Acquisition Act, 1894 and acquire the same and pay compensation in respect thereof.

The case of the petitioners, in brief, is that they are the owners of the lands in survey nos. 39, 40, 41/5, 41/6 and 41/2 situated in Kanchanbagh village, Charminar mandal, Hyderabad district and have been in possession of the lands. Out of the total extent of the said lands, certain portions were acquired by the respondents earlier, which have been subject matter of proceedings in different Writ Petitions. However, after acquisition of an extent of Ac.18.35 gunts out of Ac.22.30 guntas in survey no.39 and an extent of Ac.20.17 guntas out of Ac.24.30 guntas in survey no.40, there still remains balance of Ac.3.35 guntas and Ac.4.13 guntas respectively in each of the said survey nos. Though there is no such acquisition for said extent of balance area, the respondents, under the guise of earlier acquisition proceedings in part, have taken possession of entire extents in all these survey numbers. Thus, the possession of extents is beyond the acquired area. Thereupon, the petitioners have filed

their representations and also objection petitions on 29.09.1981 followed by lawyer's notice on 08.12.1981, whereupon certain steps were taken by the respondents for survey, measuring the lands and for demarcation as evident from the proceedings No.J1/1507/75, dated 22.12.1981. In spite of the same, there was no survey and they have been delaying the proceedings. The case of the petitioners is that having taken possession of the balance extent for which no such notification been issued, it is not open for the respondents herein to sustain the same, and necessarily, for such balance also, the respondents have to initiate the proceedings by issuing notification as contemplated under the provisions of the Land Acquisition Act. The petitioners also referred to the proceedings of this Court in W.P.No. 3797 of 1987, dated 07.09.1987; W.P.No.4684 of 1987 dated 10.07.1987; and W.A.No.1768 of 1987 dated 10.11.1988 as confirmed by the Supreme Court of India in S.L.P.No.10907 of 1981. It is also pointed out that as per the judgment in batch of cases in W.P.No.14865 of 1989, 14988 of 1989 and 17267 of 1989, dated 20.10.1989, a direction has been given for issuance of notification under the provisions of the Land Acquisition Act. In similar circumstances, this Court also issued directions in W.P.No.3909 of 1974 on 10.12.1975 for the purpose of initiating the proceedings under the provisions of the Land Acquisition Act and pay compensation. In view of the same, the petitioners seek a similar such relief, more so, on the ground that any such taking over of the land without proper proceedings contemplated under law, is violation of Article 300(A) of the Constitution of India. Hence, this Writ Petition.

Contesting the petitioners' claim, there have been more than one counter affidavits filed in this Writ Petition, admitting the acquisition in part out of the aforesaid survey numbers. However, it is disputed that the petitioners' land in excess has been taken over by the respondents. Though it has been contended on behalf of the respondents that certain steps have been taken for the purpose of survey and a report was filed on 22.06.1989 followed by a requisition

on 21.01.1991, and yet it is stated that having regard to the subsequent developments made in the land, it is very difficult to identify the land in each survey number and therefore, it can not be said that the respondents are in possession of any excess land. Further, it is submitted that if any such excess is there, it is for the petitioners to establish the same and make necessary claims as per law. It is also pointed out that certain proceedings have also been initiated as per the provisions of the Requisitioning and Acquisition of the Immovable Property Act, 1952. Therefore, there is absolutely no justification for claiming the relief at this length of time.

Taking into consideration the respective submissions made from either side, the only question which arises for consideration is as to whether the petitioners are entitled to the claim as now made in respect of the land which, according to them, is in possession of the respondents beyond the extent which has been acquired under the provisions of the Land Acquisition Act.

There is no dispute in regard to the ownership and possession of the petitioners in respect of the aforesaid lands and there is also no dispute to the fact that part of each survey number was acquired by the respondents, along with several other extents. It is the case of the petitioners that since the respondents took possession of entire lands, the petitioners are entitled to treat the balance of land also to be acquired on the same par as already initiated in respect of possession of land covered under the notification. There can not be any dispute that if really the respondents have taken possession of any excess area, the same can not be taken possession and it will be directly in the teeth of the mandate as contemplated under Article 300(A) of the Constitution of India. As pointed out earlier, in view of the counter affidavits filed at different stages, there is a total variance in regard to the steps taken by the respondents herein. At one stage, the respondents have admitted that there was a survey and excess land is still not acquired. However, at later stage in the counter affidavit, the respondents dispute the factum of possession of any

such excess land though it has been contended that survey has conducted and yet, they could not possibly localise the area acquired vis-à-vis the area does not acquired in view of the developments made subsequently, since apart from these lands several other lands have also been acquired on which such development has taken place. It is not the case of the respondents that after a proper survey, it has been found that they are not in possession and there can not be any objection on their side that the petitioners can continue to remain in possession and enjoyment of the excess land. However, the respondents sought to resist that it is for the petitioners to establish their case and seek proper relief. As long as there is no proper acquisition and taking over of the land as contemplated under law, admittedly the rights can not be deprived in any manner. There can not be any justification for the respondents herein to sustain in possession beyond the extent which is covered under the notification. Having issued notification in respect of part of the land and taken over the same in its full extent, now it is not open for the respondents to contend that the said extent which is not part of the acquisition which has been made earlier, can not be identified. Apparently, such inconsistent stand is forthcoming only to deprive the petitioners from their legitimate rights as provided not only under private law but also under the provisions of the Constitution of India. Even on perusal of the earlier orders passed by this Court repeatedly in similar circumstances, there can not be any impediment especially when the respondents seek to squat over the property without any acquisition, to issue necessary directions. Except as stated above, there is no other justification sought on behalf of the respondents to deny or deprive the petitioners the relief as claimed by them nor their entitlement to any such similar treatment and payment of compensation. Accordingly, it is to be held that the entire action on the part of the respondents in not initiating the proceedings under the provisions of the Land Acquisition Act, as done earlier in respect of portions of the land in same survey numbers, is illegal.

The Writ Petition is, accordingly, allowed. The respondents are directed to initiate proceedings under the provisions of the Land Acquisition Act and take entire follow up action as contemplated under law in regard to the payment of compensation, after giving notice and opportunity. The entire exercise shall be completed within a period of three months from the date of receipt of copy of this Order.

(B.Prakash Rao,J.)

29.11.2004

DRK

Rule Nisi has been accordingly made absolute.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, the

Twenty ninth day of November, two thousand and four.

… Registrar

/TRUE COPY/

Section officer

Copy to:

1 The Secretary, Union of India Ministry of Defences, New Delhi
2 The Secretary, Revenue Department,
Govt. of A.P., Secretariat Building , Hyderabad
3 The District Collector, Hyderabad

4 Two CCs to the G.P. for Land Acquisition, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5 Two CD copies.